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I CERTIFY THAT THIS CORRESPONDENCE IS BEING TRANSMITTED BY FACSIMILE TO THE PATENT AND TRADEMARK OFFICE ON THE DATE AND TO THE NUMBER SHOWN BELOW. FAX. NO. 703-872-9306 COMPRISING ~~Seven~~ (7) SHEETS INCLUDING THIS PAGE.

Date: February 14, 2005

Samuel W. Apicell
 Samuel W. Apicell
 Reg. No. 36,427

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/823,902
 Applicant : Gardner, Jr. et al.
 Filed : Herewith
 Title : METHOD FOR DETECTION OF PATHOGENIC
 MICROORGANISMS
 TC/A.U. : 2877
 Examiner : Evans, Fannie L.
 Docket No. : E2079-00006

Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

AMENDMENT

Sir:

In response to the Office Action dated November 18, 2004, please amend the above-identified application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks/Arguments begin on page 11 of this paper.

A Terminal Disclaimer To Obviate A Double Patenting Rejection Over A Prior Patent is attached to this response.

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PAGE 3/17 * RCVD AT 2/14/2005 2:25:44 PM (Eastern Standard Time) * SVR:USPTO-EFXXF-1/1 * DHIS:8729302 * CSID:717 232 4015 * DURATION (mm:ss):04:06

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PTO/SB/28 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

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**TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING
REJECTION OVER A "PRIOR" PATENT**Docket Number (Optional)
E2079-00006

In re Application of: GARDNER ET AL.

Application No.: 10/823,802

Filed: APRIL 14, 2004

For: METHOD FOR DETECTION OF PATHOGENIC MICROORGANISMS

The owner, CHEMIMAGE, INC., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 8,765,668 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:

- expires for failure to pay a maintenance fee;
- is held unenforceable;
- is found invalid by a court of competent jurisdiction;
- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims canceled by a reexamination certificate;
- is reissued; or
- is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record. Reg. No. 38,427

Samuel W. Apicelli
Signature

2/14/05
Date

SAMUEL W. APICELLI
Typed or printed name

02/23/2005 66 STANLEY 00000008 041679 10823902

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717-237-5516
Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

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*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
Form PTO/SB/98 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT APPLICATION FEE DETERMINATION RECORD

Effective October 1, 2003

Application or Docket Number

10/823,902

E2079-00006

CLAIMS AS FILED - PART I

(Column 1)

(Column 2)

TOTAL CLAIMS	56	
FOR	NUMBER FILED	NUMBER EXTRA
TOTAL CHARGEABLE CLAIMS	56 minus 20 =	36
INDEPENDENT CLAIMS	2 minus 3 =	0
MULTIPLE DEPENDENT CLAIM PRESENT <input type="checkbox"/>		

* If the difference in column 1 is less than zero, enter "0" in column 2

CLAIMS AS AMENDED - PART II

(Column 1)

(Column 2)

(Column 3)

AMENDMENT A	2/14/05	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
	Total	• 26	Minus	** 54	=
	Independent	• 4	Minus	*** 3	= 1
	FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>				

(Column 1)

(Column 2)

(Column 3)

AMENDMENT B		CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
	Total	•	Minus	**	=
	Independent	•	Minus	***	=
	FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>				

(Column 1)

(Column 2)

(Column 3)

AMENDMENT C		CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
	Total	•	Minus	**	=
	Independent	•	Minus	***	=
	FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>				

SMALL ENTITY TYPE ☐

OR OTHER THAN SMALL ENTITY

RATE	FEE		RATE	FEE
BASIC FEE	385.00	OR	BASIC FEE	770.00
X\$ 9=		OR	X\$18=	324
X43=		OR	X86=	—
+145=		OR	+290=	—
TOTAL		OR	TOTAL	709

SMALL ENTITY

OR OTHER THAN SMALL ENTITY

RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
X\$ 9=		OR	X\$18=	50
X43=		OR	X86=	200
+145=		OR	+290=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	200

RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
X\$ 9=		OR	X\$18=	
X43=		OR	X86=	
+145=		OR	+290=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
X\$ 9=		OR	X\$18=	
X43=		OR	X86=	
+145=		OR	+290=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

- * If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
 - ** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20."
 - *** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3."
- The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

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